1947.

File No. O. Cotton Cloth Trade/47

Legal **DEPARTMENT**

A **BRANCH**

Subject:— Opinions under the Bombay Cotton Cloth trade Regulation Order, 1945

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C O N T E N T S.

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Messrs. Shah and Mehta have served Government with notice under section 80 Civil Procedure Code contending that (1) clause 8 of the Bombay Cotton Cloth Trade Regulation Order, 1945 is ultra vires and that (2) the Government of Bombay has no right to refuse them licence on the ground that they did not carry on business before 31st December 1942.

The Bombay Cotton Cloth Trade Regulation Order, 1945 is made under clause (a) of rule 81 of Defence of India Rules read with clause (XX) of section 2(2) of the Defence of India Act. Clause 8 of that order provides that notwithstanding anything contained in this order the Government of Bombay may without assigning any reason direct that any application for a licence be refused. "A power to control trade under rule 81(2) read with clause (XX) of section 2(2) of the Defence of India Act includes a power to prohibit as the Court of appeal in England pointed out in the Queen versus Croydon and Norwood Tramways Company (1886, 18 Q.B.D. 39)." In that case Lidley L.J. observed:

"If I prohibit a man from doing anything, I control him to that extent".

Following that decision Leach C.J. in Public Prosecutor versus Alapak Venkayya (I.L.R. 1944 Mad. 448) observed at p. 454:

> "One way of controlling or regulating a trade is by insisting upon those engaged in it taking out licences. The power to grant a licence must contain a power to refuse one if this is deemed to be expedient. In our judgment the Central Government had the power under rule 81(2) to issue food-grains control order and the provisions of clause 3 are in all respects intra vires notwithstanding that there is a discretion in the matter of issuing licences."

It is therefore apparent that clause 8 of the Bombay Cotton Cloth Trade Regulation Order is intra vires.

The next question for consideration is whether in the exercise of power vested under clause 8 of the Cotton Cloth

Trade Regulation Order Government can refuse a licence to those who were not in the business before 1942. Messrs. Shah and Mehta may in this connection rely on section 15 of the Defence of India Act which provides:

> "Any authority or person acting in pursuance of this Act shall interfere with the ordinary avocation of life and enjoyment of property as little as may be consonant with the purpose of ensuring the public safety, interest and the defence of British India."

It is true that ordinarily a person is entitled to pursue his normal avocation and engage in the cotton cloth business provided he conforms to the regulation of that business and obtains a licence from the Licensing Authority under the Bombay Cotton Cloth Trade Regulation Order. But under this order it is open to Government to direct without assigning any reason that any application for a licence may be refused; and if on grounds of public policy and for the public good, Government decides not to grant any licenses to persons who were not in the business before 1942 such action could hardly be deemed to involve a breach of section 15 of the Defence of India Act. The suit if filed can be successfully defended. No action appears necessary at this stage.

Sd/- (P.N.Moos.)
Remembrancer of Legal Affairs.

U.R. to C.S.D., No.4206, dated the 7th June 1946.

The question raised for the consideration of the R.L.A. is whether refusal to grant licences under the Bombay Cotton Cloth Trade Regulation Order, 1945 is unconstitutional and illegal. This question was considered by the R.L.A. in his opinion No. 4236, dated 7th June 1946 (ax copy of which is herewith forwarded).

Mr. A.B. Pandya may probably rely upon the proposition that power to regulate does not include power to prohibit. In Attorney General for Ontario V. Attorney General for Canada (1896 ~~XXXX~~ A.C.348 at p. 363) it was decided that the power given in the Dominion Parliament by section 91(2) of the British North American Act to make laws for the regulation of trade and commerce did not enable the Dominion Legislature to enact legislation to prohibit the traffic in intoxicating liquors. The Federal Court in Bhola Prasad V. King Emperor (1942 Federal Law Journal of India Vol. V. P. 17) did not see any reason to dissent from the view that a power to regulate does not include a power to prohibit. The Bombay Cotton Cloth Trade Regulation Order, 2056, no doubt, can provide for regulating and not preventing trade in Cotton Cloth. By providing in clause 4 that save as therein provided no dealer shall sell or store for sale cloth except under and in accordance with the conditions of a license granted by a licensing authority the Order does not prohibit trade. All that it does ~~xx~~ is to require a license which means merely the regulation of trade. Consequently the order is neither unconstitutional or illegal. Power to grant a license includes power to refuse one if this is deemed to be expedient (See I.L.R. 1944 Mad. 443 at p. 454). Consequently there appears to be no substance in the contention of Mr. A.B.

M.

Pandya.

Sd/-
Remembrancer of Legal Affairs.

U.R. to C.S.D., No.1230, dated the 6th February 1947.

Mr.

Office of the R.L.A.

A broker has implied authority to act according to the rules and regulations of the particular market (see Iyer's Law of Contracts page 933). If as stated at page 49 ante it is true that brokers merely bring about a contracting mind between the parties without being sellers or purchasers as agents and do not handle cloth at all, they cannot be considered dealers within the meaning of sub-clause (b) of sr clause 2 of the Bombay Cotton Cloth Trade Regulation Order, 1945 (see the Bom. High Court decision in Criminal Appeal 537 of 1944). Much will however depend upon the extent of the authority of a broker and the trade custom.

Sd/-
Remembrancer of Legal Affairs.

U.O. to C.S.D. No.841, dt. the 23rd January 1947.

Office of the P.L.I.

In Commissioners of His Majesty's Works vs. Pontypridd Museums Hall Co. (1920, 2 K.B. 233) it was held that notwithstanding the Commissioner of Works were an incorporated body, when acting as mere agents of the Crown they were not bound by the Statute of Limitations inasmuch as that statute does not bind the Crown. On that principle the Bengal Textiles Association would have been exempt from the provisions of the Bombay Cotton Cloth Trade Regulation Order, 1945 if that Association were purchasing cloth merely as an agent of the Government of Bengal. But the Bengal Textiles Association, being a trading corporation constituted under Ordinance No.XXXII of 1945 for the purpose of improving the procurement and wholesale distribution of piece goods in the Province of Bengal, is not an agent of the Government of Bengal, although its activities are subject to the general control of the Government of Bengal and it is bound to comply with any directions of a general nature which that Government or any one authorised by that Government in this behalf may give to it. Consequently the Bengal Textiles Association would be bound by the Bombay Cotton Cloth Trade Regulation Order, 1945.

In his letter No.G/143/5153 dated 27.3.47 the Manager, Bengal Textiles Association has stated:

> "Till now we were purchasing cloth through our Commissioned Agents, but our Association now intends to purchase it directly from the Quotaholders".

Since the Association intends to purchase cloth directly from the Quotaholders, it appears that Association would require D Class licence under the Bombay Cotton Cloth Trade Regulation Order, 1945.

Sd/-
Remembrancer of Legal Affairs.

U.R. to P.T.C. No.3477 dated the 10th April 1947.

Dr.

Action of the R.L.A.

The question raised for the consideration of the R.L.A. is whether indentors who import cloth not on their own behalf but on behalf of local dealers as their agents require a license under the Bombay Cotton Cloth Trade Regulation Order, 1945.

2. Indentors contemplated in this case fall, as pointed out by the Deputy Provincial Textile Controller in his note at page 8 ante, under clauses (ii) and (iii) . An indentor falling under clase (ii) "collects orders from local dealers and imports in his own name. He passes on the goods received to the party concerned and charges him commission. He takes risk for losses in transit, covers himself such losses by insurance on the total consignment coming in his own name and adjusts his commission to cover these expense and leave himself a reasonable margin". The goods imported by such a indentor in his own name vest in him and do not pass to the principal until after payment. An indentor of this class would therefore be a dealer carrying on the business of buying and selling as agent within the meaning of clause 2(b) of the Bombay Cotton Cloth Trade Regulation Order, 1945 and require a license.

3. An indentor falling under clause (iii) "collects orders from local dealers places order on their # basis in the name of the party placing the order, takes no risk for himself on account of losses in transit and only charges for his labour. He does indenting work. If any one, he is importer pure and simple". It is apparent x that an indentor of this class does not handle the goods. Consequently he cannot be considered a dealer and requires no license under the Bombay Cotton Cloth Trade Regulation Order, 1945.

ad /-
Remembrancer of Legal Affairs.

U.O.No. to C.S.D. No.1583 dated the 15th February 1947

Submitted:

2. Please see C.S.D.'s note at p.49 ante. Under clause 2(h) of the Bombay Cotton Cloth Trading Regulation Order 1945, the licence is to be issued and renewed by the licensing authority, which is the District Magistrate in the District. In one of the cases of renewal by the D.M. Thana, the renewal was certified over the signature of an officer who signed "for the D.M." The question raised for the R.L.A.'s opinion is whether this is legal and permissible.

3. The P.T.C. and the C.S.D. are of the opinion that delegation of powers is not contemplated under cl.2(h) of the Order.

4. Clause 15 of the Order provides that "the renewal of the licence be effected by , ... and the signature of the licensing authority .

"Licensing authority by cl.2(h) means

(i) The Pro. Textile Controller in

(a) xxxxxxxxxxxxxx

(b) x x x x x x x x

(ii) and elsewhere the Distt. Magistrate.

Thus it is clear that the licensing authority in Thana is the District Magistrate.

There is no provision in the B.C.C.T.R. Order 1945 providing for the delegation of the District Magistrate powers and the R.L.A. in his opinion U.O. 5782 dated the 7th June 1947 has opined that "in absence of a provision in the Act for delegation of powers conferred on the Prov. Govt., it would not be competent for Govt. to delegate the power to the Director of Public Instruction."

Thus it is clear that the District Magistrate cannot delegate his powers. The view taken by the P.T.C. and the C.S.D. is correct and the papers may be seen and returned.

As the Bombay Cotton Cloth Trade Regulation Order, 1945, was made under rule ~~81~~ 81(2) of the Defence of India Rules and was in force immediately before the commencement of Ordinance No.XVIII of 1946, it continued in force and is deemed to be an order made under the Essential Supplies (Temporary Powers) Act, 1946 (cf. sec.17) . Under clause (b) of section 4 of the Act the Central Government can only delegate the powers to make orders under section 3 delegate the powers to make orders under section 3 to the Provincial Government or such officer or authority subordinate to the Provincial Governme t [illegible] as may be specified. The expression "licensing authority" as defined in clause 2(h) means :—

(i) the ~~City~~ Provincial Textile Controller in :—

(a) the city of Bombay and Bombay Suburban District, and

(b) the Ahmedabad Municipal Borough, the limi s of Cantonment of Ahmedabad and the revenue limits of the villages in the City Mahal of the Ahmedabad District;

(ii) and elsewhere the District Magistrate.

In Thana, therefore the "licensing authority" is the District Magistrate, Thana. A license signed by any officer other than the District Magistrate "for D.M." would not be license validly issued (cf.50 cal.135) . If as stated by the P.T.C. the D.Ms. cannot attend to this work personally it will be necessary to amend the definition of "licensing authority". The view expressed in the C.S.D. office note that no other officer except the licensing authority can sign and issue a valid license, is correct.

Id./B.P.12.7

A.L.R. Reply may be :—

Seen and returned.

The view expressed in C.S.D. office note at p.51 ante is correct.

Id./R.T.K.14.7 U.r. to C.S.D.No.7433 dt. 19.7.1947.

R.L.A. 18/7 D.V.V. 18.7